

## Message Text

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PAGE 01 MONTRE 00395 112115Z

ACTION EB-08

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E. O. 11652: N/A

TAGS: PORG, EAIR, ICAO

SUBJ: ICAO: REPORT OF USDEL TO DEN/ICE III CONFERENCE - DANISH CLAIM

BEGIN SUMMARY: CONFERENCE ACCEPTED US PROPOSAL AND RECOMMENDED THAT STATES TAKE UNDER CONSIDERATION DANISH CLAIM FOR REIMBURSEMENT OF LOST REVENUES RESULTING FROM EXCHANGE RATES USED FOR PAYMENTS UNDER JOINT FINANCING AGREEMENT, SUBJECT TO CERTAIN CONDITIONS. CONFERENCE ALSO RECOMMENDED THAT SYG REPORT PERIODICALLY TO COUNCIL ON STATUS OF THIS QUESTION. DENMARK WAIVED SMALL CLAIM AGAINST COUNTRIES PAYING ASSESSMENTS IN UK POUNDS; DANES THEREFORE HAVE CLAIM AGAINST NINE CONTRACTING GOVERNMENTS, INCLUDING US, WHICH PAY ASSESSMENTS IN DOLLARS. END SUMMARY.

1. UNDER AGENDA ITEM 4-DANISH CLAIM FOR LOST REVENUES FROM 1972 THROUGH 1976 RESULTING FROM EXCHANGE RATES USED FOR PAYMENTS UNDER ARTICLE XI OF JOINT FINANCING AGREEMENT - US DEL ON MARCH 3 MADE FOLLOWING PRESENTATION: (A) IN CONNECTION WITH ICAO SENIOR LEGAL OFFICER'S STATEMENT OF DEC. 9, 1976 TO JOINT SUPPORT CTE THAT DANISH CLAIM APPEARED VALID, LEGAL BUR SHOULD SUBMIT IN WRITING TO CONFERENCE STATEMENT OF LEGALITY OF CLAIM; (B) DANISH FIGURES SHOULD BE AUDITED ONCE DENMARK HAS SUBMITTED COMPLETE FIGURES FOR 1976; (C) PROVIDED STATEMENTS OF LEGAL BUR AND AUDITORS ARE SATISFACTORY, US WILL CONSIDER FAVORABLY  
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PAGE 02 MONTRE 00395 112115Z

PAYING ITS SHARE OF CLAIM. IT DOES THIS WITH REALIZATION THAT US MAY BE PAYING OVER HALF OF TOTAL CLAIM OF APPROXIMATELY \$460 THOUSAND BECAUSE US HAS HIGHEST PERCENTAGE SHARE OF TOTAL, AND ESPECIALLY DOLLAR ASSESSMENT; (D) PAYMENT FOR 1972-76 WOULD BE CONDITIONAL ON UNDERSTANDING THAT DENMARK WOULD SUBMIT NO FURTHER CLAIMS, SINCE US AND DENMARK (AND OTHER COUNTRIES) HAVE AGREED ON COMMERCIALY AVAILABLE EXCHANGE RATE FOR PAYMENT OF JANUARY 1,

1977 AND SUBSEQUENT US ASSESSMENTS; (E) PAYMENT WOULD ALSO BE CONDITIONAL ON USE OF MIDDLE MARKET BANK RATES IN CALCULATING CLAIM. IN CONNECTION WITH DANISH DOCUMENT STATING THAT DANISH NATIONAL BANK BUYING RATES WERE USED IN CALCULATING CLAIM, US WOULD REQUEST ADJUSTMENT TO COVER ANY DIFFERENCE BETWEEN TWO EXCHANGE RATES; (F) FINALLY, US PAYMENT WOULD BE SUBJECT TO AVAILABILITY OF FUNDS. US DEL COMMENTED FURTHER THAT CONSIDERATION SHOULD BE GIVEN TO UTILIZING ACCRUED INTEREST ACCOUNT OF ARTICLE X RESERVE FUND -- SUGGESTION WHICH SUBSEQUENTLY WITHDRAWN WHEN LEGAL BUR EXPRESSED RESERVATIONS OVER USE OF THIS ACCOUNT. IN FINAL COMMENT, USDEL EXPRESSED BELIEF THAT AMENDMENT OF JOINT FINANCING AGREEMENT UNDER ARTICLE XXVI WOULD BE EASIEST WAY TO ACCOMPLISH PAYMENT OF CLAIM.

2. DENMARK STATED THAT, SINCE MORE THAN 90 PERCENT OF LOSS RESULTED FROM USE OF IMF CENTRAL RATES INSTEAD OF MIDDLE MARKET RATES FOR US DOLLAR, IT WAS PREPARED TO WAIVE CLAIM FOR LOSSES FROM PAYMENT IN UK POUNDS. SEC OF JOINT SUPPORT CTE PRESENTED ESTIMATE OF AMOUNTS OWED UNDER CLAIM BY NINE COUNTRIES PAYING IN DOLLARS (AUSTRALIA, CANADA, CUBA, FRG, ICELAND, JAPAN, PAKISTAN, SWITZERLAND AND US). ACCORDING TO FIGURES, US OWES APPROXIMATELY \$343,000 EQUIVALENT, BY FAR LARGEST AMOUNT.

3. RESULTING DISCUSSION FOCUSED ON NEED TO DETERMINE LEGAL VALIDITY OF CLAIM AND REVEALED DIVERGENCE OF VIEWS, WITH ICELAND AGREEING TO PAY IF CLAIM IS LEGALLY SOUND AND FRG EXPRESSING RESERVATIONS. SOME STATES RESERVED POSITION PENDING DISCUSSIONS WITH AUTHORITIES. USDEL PROPOSED AND SUBSEQUENTLY CHAIRED WG TO DISCUSS CLAIM. DIR OF LEGAL BUR THEN SUBMITTED WORKING PAPER STATING THAT  
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PAGE 03 MONTRE 00395 112115Z

DENMARK HAD AGREED PROVISIONALLY TO ACCEPTANCE OF IMF CENTRAL RATES SUBJECT TO RETROACTIVE ADJUSTMENTS, AND THAT RESERVATION WAS STILL VALID. ON MARCH 7 US PROPOSED, AND CONFERENCE ACCEPTED, CONFERENCE RECOMMENDATION THAT NOTED OPINION OF LEGAL BUREAU THAT CLAIM IS LEGALLY VALID, AND RECOMMENDED THAT STATES IN QUESTION TAKE DANISH CLAIM UNDER CONSIDERATION, SUBJECT TO SAME CONDITIONS AS CONTAINED IN US PRESENTATION. CONFERENCE ALSO RECOMMENDED THAT SYG "REPORT PERIODICALLY TO COUNCIL ON STATUS OF THESE MATTERS AND CLAIMS."

4. COMMENT: FORTHCOMING US POSITION CLEARLY PLEASED DANES, AND SHOULD TO SOME EXTENT COUNTERBALANCE THEIR UNHAPPINESS OVER DEN/ICE III'S ACCEPTANCE OF SNAP RECOMMENDATIONS.  
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